

REMARKS/ARGUMENTS

Claim 23, 28 and 39 remain in this application, with Claims 23 and 39 having been amended, Claims 24 - 27, 29 and 34 having been canceled and Claims 1 – 22, 30 – 33, 35 - 38 and 40 – 42 having been withdrawn to expedite prosecution of this application.

Favorable reconsideration is respectfully requested in view of the foregoing amendments and the following remarks.

All of the currently pending elected claims, stand rejected as being obvious over the publication entitled “Vacuum Assisted Closure: A New Method for Wound Control and Treatment: Animal Studies and Basic Foundation”, by Morykwas et al. in view of U.S. Patent No. 2,524,195 (Hoover). In particular, the examiner concludes that Morykwas et al. discloses everything that is being claimed in Claims 23 and 29, except for the spirally wound gauze rolls, but that features is allegedly taught by Hoover.

It is respectfully submitted that such conclusions are erroneous, and based on hindsight reasoning using applicants’ own disclosure as a template for piecing together disparate prior art, an impermissible action.

The Final Rejection states that Morykwas “comprises a source of suction coupled to said enclosure to directly apply continuous suction via said opening in said enclosure to said enclosed interior space to said anisotropic wound packing arranged to preferably collapse inward along said at least one axis *inasmuch as this is necessarily what occurs when suction is applied to open-cell foam having one dimension larger than the other as in the foam disclosed in Morykwas, said wound packing thus necessarily being arranged to be placed in the wound to encourage preferential contraction of the wound along the at least one wound axis when continuous suction is applied to the wound.*” (emphasis added). There is a basic fallacy in that conclusion, namely, Morykwas doesn’t disclose that the open-cell foam has one dimension larger than the other so that it will preferentially collapse, let alone disclose or suggest that the foam would be oriented so that it preferentially collapses inward along a radial axis. There is absolutely no teaching in Morykwas of an anisotropic wound packing arranged to preferentially

collapse as stated in Claims 23 and 39.

Insofar as the citation to Hoover is concerned, the Final Rejection states: "Hoover discloses a wound packing having at least one roll of gauze 16' . . . arranged to be placed in the interior of the wound, in this case a bodily cavity experiencing hemorrhaging, with said at least one radial axis facing a side of the wound and extending parallel to the at least one wound axis inasmuch as Hoover discloses that the cavities are e.g., nasal, uterine and throat, all of which would require a vertical orientation of the gauze roll . . . it would be obvious . . . to modify the device of Morykwas such that the saline-moistened gauze is in the form of at least one gauze roll oriented vertically and meeting the claim limitations . . .". There are several fallacies in that reasoning. First, the examiner is mixing up the two types of wound packing materials disclosed in Morykwas. In particular, the examiner uses the open-cell foam of Morykwas (which is not disclosed as being any particular shape or being anisotropic) to support her argument that it exhibits the anisotropic feature claimed, then she switches to the saline-moistened gauze embodiment of Morykwas (which is not disclosed as being a roll or spiral) to give her a basis to conclude it would be obvious to substitute Hoover's spiral gauze to meet the spirally wound gauze limitation claimed.

Moreover, and quite significantly, the examiner's reasoning assumes without any evidence that that the nasal, uterine and throat cavities disclosed by Hoover would require a vertical orientation of a spirally wound gauze roll therein, so that disposition of that type of gauze roll in a wound would also require that orientation. The only teaching of use of a spirally wound gauze anisotropic wound packing is applicants' own disclosure.

Notwithstanding the deficiencies of the prior art as discussed above, Claim 23 has been amended by this Amendment to call for the following combination of features not shown or suggested in Morykwas or Hoover (or any of the other cited prior art for that matter): (1) an anisotropic wound packing that is formed of plural rolls of gauze, (2) each roll having a longitudinal axis and at least one radial axis and comprising plural spiral layers wound about the longitudinal axis, (3) with those rolls being arranged to be tailored to individual wound cavity shapes and placed in the interior of the wound cavity so that the least one radial axis of each roll

faces a side of the wound cavity and extends parallel to the at least one wound axis, (4) a source of suction drawing fluid from the wound out of the enclosure, and (5) with the wound packing preferably collapsing inward along the at least one radial axis when continuous suction is applied to impose a controlled directional strain on wound tissue along that axis at an amplitude for optimizing closure of the wound and with the wound packing also serving to prevent pooling of fluid in the wound cavity.

Those combined features are not shown nor suggested in the cited prior art and also find clear antecedent support in the specification of the application. With respect to the latter, the features attention is directed to paragraphs [0046] and [0047] of the specification reproduced below.

[0046] As shown in FIG. 2, the packing 55 may comprise a plurality of such cylindrical windings. The packing cylinders 55 provide a number of functions. The packing 55 prevents pooling of fluid in the wound cavity 51 and allows for wound drainage to be drawn from the wound surface and out of the enclosure 10. The packing cylinders 55 may be comprised of medical gauze. By using a construction for the packing 55 as shown in FIG. 3, such allows the gauze cylinders 55 to preferably collapse inwardly in the radial directions as indicated by the axes 56 and 57 as shown in FIG. 3, but not in the direction of the axes 58 as shown in FIG. 2. It will be seen that the axis 58 is in the vertical direction, facing upwardly or outwardly from the wound cavity 51, whereas the axes 56 and 57 face the sides 60 of the wound 51. This anisotropic behavior of the wound packing material can be utilized to impose a controlled directional strain on tissues in a medically preferred direction and amplitude necessary to optimize closure of difficult wounds.

[0047] Thus, as suction is applied to the wound 51, in the manner discussed above, into what would be the cavity 62 just above the wound, except that the cover 30 is sucked down to the packing 55 as shown in FIG. 2 and the wound 51 is encouraged to contract, side-to-side, and front-to-back, such that it tends to close peripherally, from a larger dimension "X" as shown in FIG. 2, to a smaller dimension "Y" as shown in FIG. 4, over time. The gauze cylinders, as illustrated, provide a versatile method for packing or filling the wound space that can be tailored to individual wound shapes.

Accordingly, it is respectfully submitted that Claim 23 as amended is patentable and such favorable action is respectfully requested.

Application No. 10/663,226
Amendment Dated June 17, 2010
Reply to Office Action of March 31, 2010

Claim 28 is dependent upon Claim 23 and is patentable for reasons similar thereto.

Claim 39 is an independent method claim which has been amended in a somewhat similar manner to the amendment to Claim 23 and is hence patentable for reasons similar thereto. In addition Claim 39 has been amended to correct a typographic error.

For at least the reasons set forth above, it is respectfully submitted that the above-identified application is in condition for allowance. Favorable reconsideration and prompt allowance of the claims are respectfully requested.

Should the Examiner believe that anything further is desirable in order to place the application in even better condition for allowance, the Examiner is invited to contact Applicants' undersigned attorney at the telephone number listed below.

Respectfully submitted,

CAESAR, RIVISE, BERNSTEIN,
COHEN & POKOTILOW, LTD.

By

Barry A. Stein
Registration No. 25,257
Customer No. 03000
(215) 567-2010
Attorneys for Applicants

June 17, 2010

Please charge or credit our Account
No. 03-0075 as necessary to effect
entry and/or ensure consideration of
this submission.

CERTIFICATE OF MAILING/TRANSMISSION PURSUANT TO 37 CFR 1.8

I hereby certify that this correspondence and any attachments referenced therein is/are being mailed/transmitted to the USPTO by: (A) first class U.S. mail with sufficient postage (37 CFR § 1.1(a)); (B) facsimile (37 CFR § 1.6 (d)); or (C) EFS-Web (37 CFR § 1.6(a)(4)) on the date shown below.

Date: June 17, 2010

Signature: 

Name: Barry A. Stein, Reg. No. 25,257